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September 9, 2021

**VIA ECF**Honorable Margo K. Brodie  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

**I. Background**

I have continued to receive call and videoconference data from the parties. I continue to be in communication with the Federal Defenders, Inc. ("Plaintiff") and their

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counsel, and the government and representatives of the Metropolitan Detention Center (“MDC”) and Metropolitan Correctional Center (“MCC”).<sup>1</sup>

My communications with the Federal Defenders and the government focused on the following topics:

1. The current status of in-person legal visitation at both institutions.
2. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC and the MCC.

## **II. Telephonic Contact**

The parties continue to schedule and facilitate legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls were scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC and 1 to 3:30 pm at the MCC. As Your Honor is aware, the parties have also made efforts to expand legal call hours beyond the times provided in the Protocol. *See* ECF Nos. 70 & 76.

### **A. MCC**

According to the information received from the parties, MCC scheduled 12 calls between September 2 and September 8.<sup>2</sup> 7 calls were completed, one call was not completed as the inmate was in a different unit, and four calls were not completed for unknown reasons. We are working with the parties to gather more information about this call. Additionally, Federal Defenders report some scheduling issues this week.

### **B. MDC**

According to the information received from the parties, MDC scheduled 136 calls between September 2 and September 8.<sup>3</sup> 117 calls were completed, one call was cancelled by the attorney, one call was not completed as the inmate was unable to take the call,<sup>4</sup> 10 calls we are unaware of their outcome,<sup>5</sup> and seven calls were not completed for unknown reasons. We are working with the parties to gather more information about these calls. Federal Defenders report 10 call requests pending for more

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<sup>1</sup> I held a joint mediation call with the parties on September 7, 2021 and a call with the Defendants on September 9, 2021.

<sup>2</sup> We did not receive data from the MCC for Friday, September 3, 2021 and Wednesday, September 8, 2021. We also did not receive data from the Federal Defenders for Thursday, September 2, 2021.

<sup>3</sup> We did not receive data from the MDC for Tuesday, September 7, 2021 and Wednesday, September 8, 2021. We also did not receive data from the Federal Defenders for Thursday, September 2, 2021.

<sup>4</sup> Federal Defenders report that the MDC informed them that the inmate was not able to take the call due to a disciplinary reason.

<sup>5</sup> We did not receive data from the MDC for Tuesday, September 7, 2021 and Wednesday, September 8, 2021. These calls were reported by the Federal Defenders but their resolution is undetermined.

than 48 hours. Additionally, Federal Defenders report some technical and scheduling issues this week.

### **III. Videoconferencing**

#### **A. MCC**

According to the information received from the parties, MCC scheduled 5 videoconferences between September 2 and September 8.<sup>6</sup> 3 VTCs were completed and two VTCs were not completed for unknown reasons. We are working with the parties to gather more information about these VTCs. Additionally, Federal Defenders report some technical issues this week.

#### **B. MDC**

According to the information received from the parties, MDC scheduled 37 videoconferences between September 2 and September 8.<sup>7</sup> 26 VTCs were completed, nine VTCs we are unaware of their outcome,<sup>8</sup> and two VTCs were not completed due to unknown reasons. We are working with the parties to gather more information about these VTCs. Federal Defenders report 20 VTC requests pending for more than 48 hours. Additionally, Federal Defenders report some technical, scheduling, and privacy issues this week.

### **IV. Remote Access**

The parties continue to work together through mediation, as well as on their own, to discuss issues of overflow calls and VTCs, as well as technical issues around the web based platforms for court and counsel VTC access.

### **V. MCC Closure**

As noted last week, the Department of Justice recently announced the impending closure of the MCC to facilitate extensive repair work. While no schedule for closure or transfer of inmates to the MDC has been provided the parties have begun to discuss the potential impact on legal access raised by the impending changes. We have also discussed the progress made on several of the issues, including equipment issues, that have been under discussion. I will continue to monitor and discuss these issues with the parties and the Warden.

The plaintiffs have also raised concerns about the adequacy of current MDC staffing to manage access upon the transfer of additional inmates to the

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<sup>6</sup> We did not receive data from the MCC for Friday, September 3, 2021 and Wednesday, September 8, 2021. We also did not receive data from the Federal Defenders for Thursday, September 2, 2021.

<sup>7</sup> We did not receive data from the MDC for Tuesday, September 7, 2021 and Wednesday, September 8, 2021. We also did not receive data from the Federal Defenders for Thursday, September 2, 2021.

<sup>8</sup> We did not receive data from the MDC for Tuesday, September 7, 2021 and Wednesday, September 8, 2021. These VTCs were reported by the Federal Defenders but their resolution is undetermined.

MDC. Staffing changes have not been announced at this point in time, and I am advised by the Warden that the issue is under discussion within the institution as well. I will continue to discuss this issue with the parties as well as the Warden.

Respectfully,

/s/ Loretta E. Lynch  
Loretta E. Lynch

cc: Sean Hecker, Kaplan, Hecker & Fink  
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